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Vol. II

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1952

No. 26

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

No. 35

EASTERN MOTOR EXPRESS, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

No. 36

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

No. 26—FILED MARCH 12, 1952

Probable jurisdiction noted April 21, 1952

Nos. 35 and 36—FILED APRIL 16, 1952

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[fols. 1080-1092] **BEFORE THE INTERSTATE COMMERCE COMMISSION**

Docket No. Ex Parte MC-43

In the Matter of LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS.

[fols. 1093-1106] Washington, D. C. October 14, 1948

Proceedings

COLLOQUY BETWEEN COURT AND COUNSEL

Exam. Lawton: Come to order, please.

The Commission has assigned for hearing at this time and place Ex Parte No. MC-43, Lease and Interchange of Vehicles by Motor Carriers.

This is an investigation by the Commission into the lawfulness of practices of motor carriers of property that are subject to the Interstate Commerce Act in the performance of transportation with vehicles owned by others, including the interchange of vehicles between such carriers and the lease of vehicles by such carriers to private motor carriers and shippers.

The object is to determine whether any or all of the present practices are unlawful or contrary to the public interest and should be ordered discontinued and, if any or all of such practices are to be continued, whether the renting of vehicles by or to motor common/contract carriers should be limited to long-term leases, whether the use of leased vehicles should be limited to a fixed percentage of vehicles owned by the using carrier, and whether the motor carriers' practices should be governed by certain tentative rules attached to the order of January 9, 1948 instituting the investigation, or such other rules and regulations as may be found reasonable.

1—26, 35, 36

I will indicate the order of the appearances and please fill out an appearance blank and give it to the reporter if you have not already done that:

[fol. 1107] Mr. Brodsky: Mr. Examiner, before the Commission proceeds with its testimony, I should like at this time to file a petition with the Commission and the Examiner on behalf of the Household Goods Carriers Conference and the carriers noted in our appearance and make certain motions with respect to this proceeding.

I have here copies of the petition, 14 copies for the Commission. I do not have sufficient copies of the petition apparently for all parties of record, but I will distribute as many as I have and will ask leave to serve all other parties of record by mail.

[fol. 1108] Exam. Lawton: All right. We won't know who all the parties are until the record is completed.

Mr. Brodsky: We attempted to make a record of them as they filed their appearances and perhaps we can get the reporter to supply us with a copy.

Mr. Examiner, we raise at the outset of this proceeding the question of the Commission's jurisdiction with respect to the proceeding and the rules and regulations proposed for adoption. Because of our position, questioning the jurisdiction of the Commission and the legality of the proposed rules and regulations, we take the position at this time that that matter should be decided before the proceeding continues. For that purpose, we ask that this proceeding be adjourned so that parties may have an opportunity to completely brief the question and have adjudication on the matter of jurisdiction before any further testimony is taken.

Furthermore, we take the position as household goods carriers that we be excluded from this proceeding. We believe that the specialized problems and the specialized nature of the household goods carriers service is such that it requires separate treatment and a separate hearing and for that reason we ask that this hearing be postponed until there be a determination on the part of the Commission with respect to our motion that we be excluded and segregated from this proceeding.

Exam. Lawton: Why hasn't this motion been filed during [fol. 1109] the eight months that this investigation has been pending, Mr. Brodsky?

Mr. Brodsky: Mr. Examiner, we made a request of the Commission by letter at the very outset of the proceeding asking that we be segregated from this hearing. The reason we proceeded in that fashion was because we were uncertain and did not know the parties of record that might be interested and were unable to serve all those who might be interested. That request, Mr. Examiner, was denied.

Furthermore, we are proceeeding at this time because we have had only last week a resolution at a convention of the Household Goods Carriers Conference, which met here in Washington, at which action was taken formally by the convention, and unanimously, for a segregation of the proceeding. We were unable to act before that convention acted.

Exam. Lawton: The motion for an adjournment of the hearing is denied. The matter of segregating the hearing or having separate hearings for the Household Goods Carriers is taken under advisement. This petition will be treated just as any other petition. You will have to make certain to serve every party of record and they will have an opportunity to reply if they desire to do so before the petition is acted on by the Commission.

Mr. Brodsky: May I respectfully take exception to the Examiner's ruling?

[fol. 1110] Exam. Lawton: Exceptions are allowed to all adverse rulings.

Mr. Lieberman: May I as this point, sir, note that apparently everybody received a copy of the petition, I think, with the exception of one Mr. Kline, so that I don't believe there will be any necessity for further serving.

Exam. Lawton: There may be some other appearances entered. We will check the list when we complete the hearings. Are you prepared to proceed, Mr. Pou?

Mr. Pou: I am, sir.

W. Y. BLANNING was sworn and testified as follows:

Direct examination.

By Mr. Pou:

Q. Are you Mr. W. Y. Blanning?

A. Yes, I am.

Q. What is your official position, please, sir?

A. I am Director of the Bureau of Motor Carriers, Interstate Commerce Commission.

Q. How long have you held that position?

A. Since October, 1937.

Q. Prior to that date, were you employed by the Bureau of Motor Carriers of the Interstate Commerce Commission?

A. I was Assistant Director of the Bureau of Motor Carriers from the time it was organized until I was appointed director.

Q. Prior to that time, what experience, if any, did you have in public regulation of motor carriers?

[fol. 1111] A. At the time I was appointed as Assistant Director of the Bureau, I was Director of the Bureau of Public Convenience of the Public Service Commission of Pennsylvania. I had held that position five years and that bureau, during that period, handled the regulation of motor carriers in the State of Pennsylvania and the issuance of operating authorities. Prior to that for two years I practiced law, having a few motor carriers as clients, and prior to that time I was on the legal staff of the Public Service Commission of Pennsylvania and handled, I believe, all of the appeals in the Appellate Court from rulings involving motor transportation.

Q. Then summarizing your experience, how many years does it include, Mr. Blanning?

A. About 25 years.

Q. Have you, in connection with this matter, prepared a written statement of testimony you desire to offer?

A. I have.

Q. What have you done with respect to that statement and certain exhibits referred to in that statement toward giving notice to the other parties to this proceeding.

A. A copy of the statement which I intend to read and of the exhibits to which I refer was mailed on Friday of week before last to all parties of whom we had record in this proceeding, that is, those who had written in and asked for notice of any changes in the hearing, not to all of the motor [fol. 1112] carriers who are parties.

Q. In fact, all of the motor carriers who hold operating authority from the Commission and who are now operating are made parties to the proceeding, is that right?

A. That is right. We did not send a copy to all of those parties, but we sent them to all who had sent notice to the Commission that they were interested in the proceedings.

Q. And that included more than 300 persons, did it not?

A. I believe we sent out 330 on Friday and approximately a dozen since then.

Q. Now, you referred to Friday of the week before last. To be exact, that was Friday, October 1, 1948, was it not?

A. Yes, October 1st.

Q. If you will, sir, I would like to have you read that statement which I may say, Mr. Examiner, has been distributed here again this morning, as well as having been mailed by Mr. Blanning earlier.

Mr. Todd: Mr. Examiner, I wonder, before Mr. Blanning commences to read this written statement, whether it is understood that we are not going to make timely objections, naturally, since he will be reading the statement, so motions to strike any of the evidence that we think might be deemed improper will be in order after the statement is read.

Exam. Lawton: Yes.

Mr. Hernly: Mr. Examiner, before Mr. Blanning begins [fol. 1113] his statement, I wanted to inquire if it wouldn't be possible to at least have enough chairs so that we could all sit down. I am very much interested in Mr. Blanning's testimony.

Exam. Lawton: I am very sorry, Mr. Hernly. There will be more chairs available before the afternoon session, but I believe they cannot do any better at this time. Had we

known a week ahead of time, we might have gotten the auditorium. This is the best we can do.

The Witness: The present proceedings were instituted by the Commission following a recommendation made by me. The reason for the recommendation was the receipt of numerous complaints from carriers and of reports from the staff of the Bureau of Motor Carriers concerning certain practices in connection with the transportation of property by motor vehicle, which practices seemed not to be unlawful but which were considered to be contrary to the national transportation policy as stated in the Interstate Commerce Act. These practices consisted of transportation of property for compensation in interstate commerce in vehicles which were not operated under actual supervision by motor carriers holding authority from the Commission. As such vehicles were usually operated at the request or with the consent of carriers which held authority to perform the transportation, the carriers usually claimed that the vehicles were under lease to them, and the practice was generally referred to as "leasing", although frequently there was no such assumption of con- [fol. 1114] trol by the carrier as normally occurs when property is taken under lease.

The practice was given consideration by the Bureau of Motor Carriers soon after its formation. In 1937, the Director of the Bureau at that time issued an opinion, known as Ruling No. 4, which stated, in effect, that an authorized motor carrier could use vehicles which it did not own, only if it assumed exclusive possession and control of the vehicle, and if the driver was an employee of the carrier. Later decisions of the Commission and of the courts recognized certain operations as those of the carrier although these tests were not met.

By the year 1940, at which time I was Director of the Bureau, reports reached me of so many different arrangements by which authorized carriers had property transported in vehicles which they did not own that I held meetings in several cities with selected typical motor carriers. The purpose of the meetings was to learn the practices in this respect in the different areas, to obtain the opinion of the carriers concerning the desirability of the different

practices and to discuss means for authorizing their continuance or for causing the discontinuance of them. At that time, practically every carrier operating along the east coast owned a fleet of trucks which handled the bulk of its business, but many of them, when they had more freight than they could handle in their own trucks, had it hauled by others. Some confined themselves to other com- [fol. 1115] mon carriers; others would use any truck which was available, usually of a contract carrier, an exempt carrier, or a private carrier which was looking for a return load. In no such case did I hear of any pretense of a lease of the truck, and frequently a carrier would haul such shipments on trucks which also contained shipments moving on its own billing, and trucks of private or exempt carriers would frequently carry shipments of a number of authorized carriers. Similar conditions were reported at the meeting at Chicago, except that a larger number of carriers depended to a greater extent or entirely upon the use of trucks which they did not own, and there was a greater use of "gypsies", which was the name given to truck owners who were in the business of making one-way trips for any carrier which would employ him in any city in which he happened to be.

The carriers who attended the meetings were not in agreement as to the action which should be taken to meet the situation. Some thought that carriers should be forbidden to use trucks which they did not own; others thought that they should be confined to use of trucks of authorized carriers; others, principally those with limited rights, said that they could not continue to exist if they were unable to obtain loads from other carriers.

Following these meetings, I assigned to a member of the staff of the Bureau the job of preparing a proposed set of [fol. 1116] regulations designed to forbid such practices as were considered undesirable. However, the extent to which the practices were already illegal was not definite, and no satisfactory set of regulations was prepared by that time.

In 1941, a study of leasing practices and the method and amount of compensation paid to lessors, was instituted by

the Bureau. A preliminary statistical report, covering generally practices and compensation in respect of owner-operators for one week in July 1941 was released in 1943. In the meantime war had begun and the Office of Defense Transportation was formed. It issued a number of directives designed to obtain the maximum use of available motor vehicles and to prevent unnecessary use of tires and gasoline. The Commission also issued a series of Emergency Orders designed for the same purpose. Among these were General Order O.D.T. No. 3, which prohibited common carriers from operating partly loaded trucks under certain circumstances; Emergency Order No. M-1 of the Commission, which required common carriers to interchange freight when necessary to comply with the O.D.T. order; and Emergency Order No. M-6 of the Commission, which permitted a household goods mover to turn over shipments to another authorized carrier on the billing and at the rates of the carrier issuing the bill of lading. All of those orders have since been cancelled or have expired.

Although none of these orders or directives authorized transportation for hire by persons not holding operating [fol. 1117] authority, they permitted some practices which were permissible only because of the war powers granted to the two agencies. Following the expiration or cancellation of the emergency orders and directives, numerous complaints were received concerning practices of some motor carriers which amounted to the granting of permission by such carriers to others to operate over their authorized routes or in their authorized territories.

In 1947, I assigned to an examiner of the Bureau the task of preparing a statement as to the circumstances under which a carrier might lawfully arrange for the transportation of freight on his own billing, in vehicles which he did not own and whose drivers were not his employees, and to advise me as to the extent, if any, that the Commission was empowered to prohibit any of such arrangements by appropriate regulations. Copies of the statement were sent to the members of the Bureau's staff, with a covering memorandum stating briefly my interpretation of the law as reflected in the statement. A copy of the body of the statement, discussing the law on the subjects assigned, and a copy

of the covering memorandum, will be offered in evidence. This statement or memorandum has not been submitted to the Commission for approval, and represents only the basis used by the Bureau in considering the need for regulations.

I then assigned to another member of the staff the task [fol. 1118] of drafting a set of regulations which would forbid those practices which the statement found to be lawful but which were considered to be undesirable, and which regulations would assist in obtaining evidence of unlawful practices. The first draft of those regulations was sent to the members of the field staff for criticism. After receipt of the criticisms, a revised draft was prepared. This redraft was discussed with representatives of American Trucking Associations, Inc., following which a letter was written to Mr. Harry E. Boot, of that organization, stating various proposals which had been considered on the subject, summarizing the redraft of regulations, asking that copies of the letter be given to the Washington representatives of the divisions, called Conferences, of that organization with a view to discussion of it at its 1947 annual convention, and requesting comments from members of the industry. Copies of this letter were sent to others interested in the subject. After the convention I was advised that, at the meetings of each of the Conferences, the carriers present differed widely as to the proper solution of the problem, although there was general agreement that some action should be taken to remove existing abuses.

As there seemed to be no possibility that a consensus of opinion of the industry could be obtained, I recommended that the present proceeding be instituted, for consideration of the various proposals which had been discussed for cor- [fol. 1119] recting an admittedly bad situation in the industry. These proposals included four different remedies:

1. Prohibition of use by a carrier of vehicles which it does not own;

2. Requirement that a carrier own a percentage of the vehicles which it uses;

3. Prohibition of the use of vehicles not owned or held under long-term lease;

4. Permission to use an unlimited number of vehicles under trip lease, but subject to certain requirements.

Provision also was made for consideration of other suggested remedies. I did not recommend the adoption of any of these suggested remedies, as the determination would necessarily depend on the evidence produced at the hearing.

Each man on our field staff was then instructed to give me specific instances of any practices prevalent in his area concerning interstate transportation for hire in non-exempt vehicles which are not owned by carriers holding operating rights, which practices he considered undesirable. They were instructed to give particular attention to practices which were undesirable for reasons other than highway safety. There were three principal reasons for this last instruction:

First, we had already received numerous reports of instances of total disregard of the safety regulations and of common safety practices on the part of persons operat-
[fol. 1120] ing under trip leases;

Second, it was thought that a description of the practices would show whether or not it was possible for the carrier to assure itself that there was compliance with the safety regulations or observance of safety practices;

Third, a revision of the safety regulations was under consideration and the subject could at least partly be dealt with in that proceeding.

The difficulty or impossibility of obtaining observance of safe driving practices by one class of persons used by authorized carriers was illustrated by a letter received from the safety director of one of the larger carriers, which had recently instituted an intensive safety program, which letter was received about the time this proceeding was instituted. The letter contained the following statement, which does not differ from the reports of conditions in many other companies:

"During the past eleven months we have made every possible effort to educate the Hired Operator on the 'Hours of Service' regulations, and to prevail upon him to follow the requirements set forth. We have issued numerous

bulletins to our Station Managers on this subject; we have contacted the operator himself, when possible; and we have stamped each settlement record with the following instructions:

> Note Carefully: Your continued employment by this Company requires that:
> [fol. 1121] (1) You drive not more than 10 hours without taking 8 consecutive hours off duty.
> (2) You take a physical examination once each year, and provide us with a copy. Compliance with these instructions is required both by this company and the I.C.C.
>
> You *must* cooperate

"In spite of our efforts, however, we find that these drivers are still failing to turn in complete logs; that they are still neglecting to take eight hours off duty; and that they apparently have a complete disregard for our instructions, Company policy, and the Interstate Commerce Commission.

Our inability to control this situation may be summed up as follows:

1. Most of our leased equipment operation stems from Chicago. The situation in that city is such that Hired Operators are at a premium, and almost every transportation company would be crippled without their services. For this reason any disciplinary action taken against them would be in effect a penalty imposed upon ourselves, since they would immediately discontinue working for us in favor of some other Company who was not so particular about compliance.

2. Many of these "Hired Operators" are engaged for one trip only. These men ignore our instructions to take 8 hours rest after 10 hours driving, and pull straight [fol. 1122] through from origin to destination. This, of course, is motivated by a desire to work as many hours as possible, and is typical of the independent attitude characteristic of this class of drivers.

The fact that these men own their own equipment is, of course, a contributing factor towards their independent

attitude. Further they have been relatively immune from fines or enforcement, since—as is only natural with the limited manpower available—your office has concentrated on the large carrier rather than on the owner-operator. They are therefore comparatively free from supervision or restrictions, and it is their natural bent to follow the course of least resistance."

"This is not a criticism—you understand—of your office, but is meant only as a fair observation of the situation which exists. You will concede, I am sure, that the Hired Operator is as much a problem to you as to us, and anything which we can do to help you remedy this situation will—at the same time—help ourselves.

Due to the fact that most of these drivers work for us intermittently, our main concern is the driving violations which result, (over 50 per cent of our October driving violations were attributable to Hired Operators) But also of major concern—from a standpoint of safety—is the fact that these drivers are working a multitude of hours each week, which—if their constant rotation of employment did not prevent the computation of "On Duty" time—would [fol. 1122½] result in a duty violation for every day of the month!

This problem—as outlined above—is one which we are eager, but unable, to correct. We reiterate that any guidance from your office would be deeply appreciated, and that any suggestions for correction will be gladly put into effect."

Reports were received from each District Director and Supervisor. Nearly all of them reported specific instances of practices prevalent in their respective areas, which practices they thought were undesirable. These reports were summarizd in a statement which omits the names of the carriers involved. It will be offered in evidence.

A practice which is not covered in that exhibit is reported by the Bureau of Accounts and Cost Finding. Some motor carriers have sold their motor vehicles to a subsidiary or affiliated corporation or person, and then leased them back, sometimes at rentals far in excess of the costs which would have resulted if they had been retained. Other carriers have a subsidiary or affiliate which purchases motor ve-

hicles and leases them to the carrier at rentals which exceed the costs which would have been entered in the carriers' accounts if the vehicles were owned by the carriers. The effect of these practices is to distort the average operating ratio of motor carriers, and if the practice continues to grow, may make the use of average operating ratios valueless in considering the need of carriers for additional revenue.

[fol. 1123] For the purpose of advising the Commission of the extent to which the motor carrier industry was engaged in the use of vehicles not owned by the carriers, and would be affected by the adoption of any restrictive regulations on the subject, a return postal card was sent to each motor carrier in the United States which held operating authority from the Commission. The carrier was asked to state the number of vehicles which it owned on December 31, 1947, and to check a "Yes" or "No" answer to each of the following questions:

Did you lease any vehicles from others in 1947?
If "Yes," is leasing important to your business?
Did you lease any vehicles to others in 1947?
If "Yes," is such leasing important to you?

The return portion of the cards were pre-addressed to the respective District Directors. The cards were then assigned to the respective supervisors. These supervisors were instructed to fill out similar cards for those carriers which did not mail the return cards, from their own knowledge of the carriers. Holders of rights but who were not operating, and duplicate returns, were ignored.

A questionnaire form was then prepared, designed to obtain complete information concerning the type and extent of use of non-owned vehicles by those carriers which stated that they leased vehicles in 1947 and that leasing was important to them. These questionnaires were sent to the [fol. 1123½] supervisors, with instructions to interview so many of such carriers as possible, and to fill out the questionnaires for each such carrier, basing answers on the information obtained at the interview where that occurred; otherwise, on their knowledge of the carrier's operations.

Thus a return was received concerning every motor carrier of property holding authority from the Commission,

except those not operating and those domiciled in Canada. The information on these returns has been compiled. Tabulations of this information in statistical forms have been made to the extent time was available up to the date of this hearing. Such tabulations will be offered in evidence.

One further study was made for the purposes of this hearing. One of the duties of the members of our field staff is to examine motor vehicles which are subject to our safety regulations during road-checks held in cooperation with state police. At such times, a record is made of any lack of compliance with the law or regulations of this Commission, especially violations of the safety regulations. For the past six months, a report has been made concerning each vehicle inspected, showing whether it was being operated for an authorized carrier, an exempt carrier, or a private carrier, and whether it was owned or leased by the carrier. From the reports made prior to September 15, 1948, a tabulation, showing the number and type of violations for each of these [fol. 1124] classes of vehicles was made and will be offered in evidence. That completes the evidence offered on behalf of the Bureau of Motor Carriers.

By Mr. Pou:

Q. Mr. Blanning, I notice at four places in the statement you just read you referred to some exhibits. You stated as to each of them that it would be offered in evidence, whereas the original draft which was broadcast stated that the exhibit is here offered in evidence. You intended to make that change, did you not?

A. That is right.

Mr. Pou: I mentioned that, Mr. Examiner, so that those present who are interested and may desire to make the change in their copy here will know that we are on technically sound ground and not have him state that the exhibits are now offered in evidence but that they will be offered in evidence later.

By Mr. Pou:

Q. I believe, Mr. Blanning, the first exhibit to which you referred in your statement was the legal statement used

as a basis for the draft of proposed rules and regulations by the Bureau of Motor Carriers?

A. That is right.

Mr. Pou: I desire, Mr. Examiner, to have this exhibit marked for identification.

Exam. Lawton: The exhibit marked "Legal Statement" will be identified as Exhibit No. 1.

[fol. 1125] (Respondent's Exhibit No. 1, Witness Blanning, was marked for identification.)

By Mr. Pou:

Q. The next exhibit to which you referred, Mr. Blanning, is headed "Prevalent Types of Leasing." Is that correct, sir?

A. That is correct.

Mr. Pou: May we have that marked for identification, Mr. Examiner?

Exam. Lawton: The exhibit headed "Prevalent Types of Leasing" will be identified as Exhibit No. 2.

(Respondent's Exhibit No. 2, Witness Blanning, was marked for identification.)

By Mr. Pou:

Q. I believe the third exhibit to which you refer is a rather lengthy document comprising six tables or tabulations and is headed on the cover sheet a description of the six tables and has attached to it a considerable number of tabulated pages. Is that correct, Mr. Blanning?

A. The first five of those tables are the ones I referred to as the third exhibit and Table 6 is the one I referred to the fourth time. They have been combined in this exhibit.

Q. So that all six of the tables were intended by you to be combined into this one exhibit?

A. That is right.

Mr. Pou: May we have that marked for identification, Mr. Examiner?

[fol. 1126] Exam. Lawton: The long exhibit which is

stated to comprise six tables will be identified as Exhibit No. 3.

(Respondent's Exhibit No. 3, Witness Blanning, was marked for identification.)

By Mr. Pou:

Q. Mr. Blanning, will you refer to the paper which has been identified as Exhibit No. 2 and which is headed "Prevalent Types of Leasing"? You have already testified in your written statement as to how this statement was compiled and to the effect that it was compiled upon reports made to you by members of the Field Staff of the Bureau of Motor Carriers; that is correct, isn't it, sir?

A. That is correct.

Q. I take it, then, that that means that you do not have personal knowledge that each of the particular carriers referred to therein did the exact things which are said to have been done there?

A. I didn't personally observe them doing it, if that is what you mean.

Q. These reports came from the members of the Field Staff to you pursuant to instructions that you had issued to them, did they not?

A. That is correct.

Q. And in the course of their duties as such employees of the Commission?

A. That is correct.

[fol. 1127] Q. Aside from the question whether the things alleged in that exhibit to have occurred actually did occur, I will ask you if based upon your knowledge and experience to which you have already referred you will state whether or not in your opinion such practices may occur or are likely to occur in the future, if not prohibited or regulated by rules required by the Commission?

Mr. Brodsky: I object to the question, Mr. Examiner. I believe there has been an insufficient foundation laid for a reply. Furthermore, if Mr. Blanning's testimony is concluded and these exhibits are to be introduced in evidence, I would prefer that counsel would make such offer so that we

can make proper objections and motions with respect thereto before there is any further testimony concerning Mr. Blanning's opinions.

Exam. Lawton: I think this is all a part of the basis for the exhibits.

Mr. Turney: Mr. Examiner, I want to join in the objection that this is entirely hypothetical. If the rules and regulations are going to be prescribed in this proceeding on the basis of what Mr. Blanning's opinion might be as to what might happen rather than what does happen, I think we are getting pretty far afield. My clients certainly don't want to have any such regulations imposed on them. I don't know what the answer to that question is, but I certainly would object to it. It is entirely hypothetical and of no [fol. 1128] importance in this proceeding.

Exam. Lawton: Well, the purpose of the investigation is to afford the industry and others who are interested in the problem an opportunity to develop the facts. I think Mr. Blanning has qualified as sufficiently expert to express the opinion called for.

Mr. Turney: As to what might happen? The question was what might happen. That is not what did happen or what is happening.

Exam. Lawton: I didn't get that impression. I thought it was whether these occurrences were possibilities in the absence of—

Mr. Turney: Exactly.

Exam. Lawton: Objection overruled.

Mr. Turney: I except.

By Mr. Pou:

Q. Will you answer the question?

A. There are none of the specific instances of practices in that exhibit which are not of a type with which I have been familiar for a number of years through reports of the field staff, interviews with motor carriers and correspondence and not only might they occur, but things of that type have occurred, to my general knowledge.